

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ORIGINAL

-----x
BODO PARADY, as Special Administratrix
Of the Estate of SABINA PARADI and BODO
PARADY and MARY MOORE, individually
Plaintiffs,
Civil Action No.
-against- 07 CIV 3640 (JCF)

MICHAEL R. PHILLIPS,
Defendant.

-----x
December 18, 2007
12:22 p.m.

Videotaped Deposition of MARIA EBERLINE,
non-party witness, taken by Plaintiff, pursuant
to Notice, at the offices of Merrill Legal
Solutions, 25 West 45 Street, New York, New
York, before Jowell Falsetta, a Shorthand
Reporter and Notary Public within and for the
State of New York.

1
2 A P P E A R A N C E S:
3
4

5 DE CARO & KAPLEN

6 Attorneys for Plaintiffs

7 427 Bedford Road

8 Pleasantville, New York 10570

9 BY: MICHAEL V. KAPLEN, ESQ.
10
11

12 JAMES D. BUTLER, ESQ

13 Attorneys for Defendant

14 591 Summit Avenue

15 Jersey City, New Jersey 07306
16
17
18

19 ALSO PRESENT:

20 JOHN HAGIN, Videographer
21
22
23
24
25

1
2 S T I P U L A T I O N S

3 IS HEREBY STIPULATED AND AGREED

4 By and between the attorneys for the respective
5 parties herein, and in compliance with Rule 221
6 of the Uniform Rules for the Trial Courts7 THAT the parties recognize the provision
8 Of Rule 3115 subdivisions (b), (c) and/or (d).9 All objections made at a deposition shall be
10 noted by the officer before whom the deposition
11 is taken, and the answer shall be given and the
12 deposition shall proceed subject to the
13 objections and to the right of a person to apply
14 for appropriate relief pursuant to Article 31 of
15 the CPLR.16 THAT every objection raised during
17 a deposition shall be stated succinctly and
18 framed so as not to suggest an answer to the
19 deponent and, at the request of the questioning
20 attorney, shall include a clear statement as to
21 any defect in form or other basis of error or
22 irregularity. Except to the extent permitted by
23 CPLR Rule 3115 or by this rule, during the
24 course of the examination persons in attendance
25 shall not make statements or comments that
interfere with the
questioning.

1
2 THAT a deponent shall answer all
3 questions at a deposition, except (i) to
4 preserve a privilege or right of
5 confidentiality, (ii) to enforce a limitation
6 set forth in an order of a court, or (iii) when
7 the question is plainly improper and would, if
8 answered, cause significant prejudice to any
9 person.

10 An attorney shall not direct a
11 deponent not to answer except as provided in
12 CPLR Rule 3115 or this subdivision. Any refusal
13 to answer or direction not to answer shall be
14 accompanied by a succinct and clear statement
15 Of the basis therefore. If the deponent does
16 not answer a question, the examining party shall
17 have the right to complete the remainder of the
18 deposition.

19 THAT an attorney shall not
20 interrupt the deposition for the purpose of
21 communicating with the deponent unless all
22 parties consent or the communication is made for
23 the purpose of determining whether the question
24 should not be answered on the grounds set forth
25 in section 221.2 of these rules and, in such
event, the reason for the communication shall be
state for the record succinctly and clearly.

THAT failure to object to any
question or to move to strike and testimony at
this examination shall not be a bar or waiver to
make such objection or motion at the time of the
trial of this action, and is hereby reserved;
and

THAT this examination may be signed
and sworn to by the witness examined herein
before any Notary Public, but failure to do so
or to return the original of the examination to
the attorney on whose behalf the examination is
taken shall not be deemed a waiver of the rights
provided by Rules 3116 and 3117 of the CPLR, and
shall be controlled thereby, and

THAT certification and filing of
the original of this examination are waived; and

THAT the questioning attorney shall
Provide counsel for the witness examined herein
With a copy of this examination at no charge.

1 MARIA EBERLINE

2 THE VIDEOGRAPHER: This is the
3 video operator, John Hagin speaking of
4 Merrill Legal Solutions. Today is
5 December 18, 2007, the time is 12:22
6 p.m.

7 We are at the offices of
8 Merrill Legal Solutions, 25 West 45
9 Street, New York, New York, to take
10 the videotaped deposition of Ms.
11 Maria Eberline in the matter of Bodo
12 Parady as special administrator of the
13 estate of Sabina Paradi and Bodo
14 Parady and Mary Moore individually
15 versus Michael R. Phillips, in the US
16 District Court Southern District of
17 New York.

18 Counsel please introduce
19 themselves for the record.

20 MR. KAPLEN: Good afternoon, my
21 name is Michael Kaplen, I represent
22 the plaintiffs in this case.

23 MR. BUTLER: Good afternoon,
24 James D. Butler and I represent the
25 defendant.

1 MARIA EBERLINE

2 THE VIDEOGRAPHER: The court
3 reporter today is Jowell Falsetta of
4 Merrill Legal Solutions. Will the
5 reporter please swear the witness.

6 THE COURT REPORTER: Do you
7 solemnly swear that the testimony you
8 are about to give is the truth, whole
9 truth and nothing but the truth?

10 THE WITNESS: I do.

11 THE VIDEOGRAPHER: Please
12 begin.

13 Q. Good afternoon, Mr. Eberline.
14 Again my name is Michael Kaplen, I represent
15 the Parady family in connection with the
16 injuries and death of their daughter
17 concerning the incident that occurred on
18 February 25, 2007. I am going to be asking
19 you some questions about that incident today.

20 And you understand we are videotaping
21 your deposition?

22 A. Yes.

23 Q. To be used in the course of the
24 trial in this action.

25 Can you give us your address, please?

MARIA EBERLINE

A. Yes, it's 11250 Morrison Street,
number 202, North Hollywood, California
91601.

Q. How long have you lived there?

A. A year now.

Q. On February 25th of 2007 were
you living there?

A. Yes.

Q. Okay.

And can you tell us please the nature
of your business or occupation?

A. I'm an actress. I come back and
forth between Los Angeles and New York for
auditions, that is why I was in the city in
February.

Q. Okay.

On February 25th of 2007 were you in
the vicinity of Ninth Avenue and 37 Street?

A. Yes, I was.

Q. Before this incident took place,
can you tell us where you were and what you
were doing?

A. I was at In the Heights the
musical, I was watching a show with my best

MARIA EBERLINE

friend.

Q. And who is that?

A. Sharlene Aquiler.

Q. And about what time did that show end?

A. Around 10:45 ish, 10:30 or so.

Q. And did you leave the theater at the end of the show?

A. Yes.

Q. And before that did you have anything to eat that night?

A. We had dinner prior to the show.

Q. And when you left the theater that night, can you tell us what the weather was like?

A. It was snowing very lightly, like light flurries.

Q. Was there any snow on the ground?

A. Light dusting of snow.

Q. By the way where was the theater located?

A. 37th and Ninth.

Q. When you left the theater, did

1 MARIA EBERLINE

2 you have a destination?

3 A. Yes, we was going to go back up
4 to West Harlem where my best friend lives.

5 Q. Did you walk or did you take a
6 cab or something else?

7 A. We had taken a cab to the
8 theater and we were going to walk to Eighth
9 and take a cab back up.

10 Q. The direction that you were
11 going to take from theater to Eighth Avenue,
12 could you tell us what that was?

13 A. Yes, from west to east.

14 Q. So you were walking on 37
15 street?

16 A. Uh-hu.

17 Q. And did you eventually get to
18 the corner of 37 Street and Ninth Avenue?

19 A. Yes.

20 Q. When you got to the corner of
21 37th and Ninth Avenue, you were intending to
22 cross the street from west to east?

23 A. Yes.

24 Q. Did you have to stop there for
25 any period of time because of traffic

MARIA EBERLINE

signals?

A. Yes, we reached the crosswalk basically and we were waiting for the signal to turn and starting walking as soon as the light, crossing signal came on.

Q. Did you have anything in your hands, an umbrella or anything else?

A. No.

Q. How about your friend?

A. No.

Q. When you started to cross the street, were there any pedestrians walking in front of you?

A. No, we was the first.

Q. And as you were crossing the street, was the weather the same as when you left the theater?

A. Yes, it was a little heavier but it was still pretty -- I mean we could see in front of us and everything.

Q. Were you crossing within the crosswalk?

A. Yes.

Q. As you started to cross the

MARIA EBERLINE

street, across Ninth Avenue, did any cars pass in front of you making any type of turn?

A. No, no.

Q. And as you were crossing the street, was the green signal in your favor for the entire time that you were crossing?

A. Yes, it was.

Q. As you were crossing that street, did your attention get directed to a pickup truck?

A. Yes about--

Q. Okay.

A. Yes.

Q. Where were you when your attention was directed to the pickup truck?

A. About three-quarters of the way across the street, I noticed the pickup truck on my left-hand side coming from the opposite direction.

Q. Coming from 37 Street?

A. Yes.

Q. What drew your attention to that pickup truck?

A. It looked like it was going a

MARIA EBERLINE

little bit fast.

Q. And do you have a driver's license?

A. Yes.

Q. How long have you been a driver?

A. 14 years.

Q. And were you able to estimate as best you could the speed of that pickup truck when your attention was drawn to it?

A. About 40 miles an hour or so.

Q. Did that pickup truck have any signal lights on?

A. Not that I noticed.

Q. After your attention was drawn to this pickup truck, what happened next?

A. We were about to hit the curb when I heard a scream, a really high-pitched shrill scream and then i heard a screech of tires and a thud.

Q. This scream that you heard, were you able to identify whether it was a male or female voice?

A. It was a female voice.

Q. Where was the scream coming

1 MARIA EBERLINE

2 from?

3 A. From behind me.

4 Q. When you say a high-pitched
5 scream, what do you mean by that?

6 A. Very shrill, frightened scream.

7 Q. After you heard that scream the
8 next thing you heard was a what?

9 A. Screech of tires.

10 Q. And following that did you hear
11 anything else?

12 A. And then a thud.

13 Q. After you heard those sounds,
14 did you do anything?

15 A. My best friend and I both turned
16 around in a panic and we kind of you know
17 scurried to the curb and turned around and we
18 saw the truck that had passed us and a body
19 on the ground and a gentleman had kind of run
20 around to see what happened.

21 Q. This truck that you saw, is this
22 the same truck that you identified as going
23 as you say going kind of fast?

24 A. Yes.

25 Q. And you saw somebody you said on

MARIA EBERLINE

the ground?

A. Uh-hu.

Q. And did you ever speak to that individual on the ground?

A. No.

Q. Did you ever speak to anybody that she was with?

A. No.

Q. Did you ever speak to the person that you saw scurrying around the truck?

A. No.

Q. Did you wait there until the police came?

A. Yes.

Q. Did you speak to the police?

A. Yes.

Q. And did they ask you what happened?

A. Yes.

Q. And did you tell them the same things that you are telling us today?

A. Yes.

Q. Did you ever speak to them again after this?

MARIA EBERLINE

A. No.

Q. Before you heard the scream or the screeching or the thud, did you hear the sound of any horn?

A. No.

Q. How long did you stay at the scene?

A. For about an hour.

Q. I'm going to show you a photograph that has been previously marked as Plaintiff's Exhibit 4 for identification on August 21st of 2007.

MR. BUTLER: May I see that, please?

MR. KAPLEN: Yes.

Q. And do you recognize what is depicted there?

A. Yes.

Q. Can you tell us what is depicted there?

A. This is Ninth Avenue and this is 37(indicating).

Q. And is that a fair and accurate depiction, I understand it was snowing that

1 MARIA EBERLINE

2 night, but the intersection of how it looked?

3 A. Yes.

4 Q. When you were crossing the
5 street, can you tell us, you were crossing
6 from --

7 A. From this corner to this corner.

8 Q. From the H&R H Block to --

9 A. This to this corner
10 (indicating).

11 Q. By the way, the person that you
12 saw on the ground following this, this was a
13 female individual?

14 A. Yes.

15 Q. When was she within the
16 crosswalk?

17 A. Yes.

18 Q. And did you notice her on the
19 corner before you started to cross the
20 street?

21 A. No, she was behind us so.

22 Q. Did you ever have any
23 conversation with her before any of this took
24 place?

25 A. No.

MARIA EBERLINE

Q. Did you know her?

A. No.

MR. KAPLEN: Thank you. I have
no further questions.

THE WITNESS: Yes.

EXAMINATION BY MR. BUTLER:

Q. What is your telephone number in
California?

A. (310) 804-3353.

Q. And you have an answering
machine, do you not?

A. Yes, a service.

Q. A service, okay.

How did you first learn of this
deposition being taken today?

A. I met with Mr. Kaplen about a
month ago.

Q. Where?

A. Here in New York.

Q. Who arranged that meeting?

A. Mr. Kaplen did.

Q. Was that by reason of a
telephone call made to you in California,
made for a time when you were here in New

1 MARIA EBERLINE

2 York for an audition?

3 A. He actually contacted me while I
4 was in New York.

5 Q. And where did you meet with him,
6 I know it was in New York but where?

7 A. At 6162 Columbus Circle.

8 Q. What is there?

9 A. It is my boyfriend's apartment.

10 Q. What is your boyfriend's name?

11 A. Rick Adams.

12 Q. Was there anyone else there?

13 A. No.

14 Q. Did you give any kind of a
15 written statement at that time?

16 A. No.

17 Q. Any kind of an oral statement
18 that was recorded in any way?

19 A. No, not that I remember.

20 Q. It was just you and Mr. Kaplen?

21 A. Yes.

22 Q. Other than that meeting, have
23 you ever meet with Mr. Kaplen?

24 A. No.

25 Q. Or anyone from his office?

MARIA EBERLINE

A. No.

Q. Did you talk to him today before
this deposition?

A. Yes.

Q. For how long?

A. About 20 minutes.

Q. Where was that?

A. That was at the Princeton Club.

Q. On 45 Street?

A. Yes, 43, 43.

Q. And how was that arrangement
made, who made that arrangement?

A. Mr. Kaplen and I.

Q. Was anybody else there besides
the two of you?

A. Nope.

Q. You received telephone calls
while in California at this number from an
investigator from my office; did you not?

A. I received one phone call.

Q. You didn't return it?

A. No, I did not.

Q. Was there a reason why you
didn't return it, when you did speak with

1 MARIA EBERLINE

2 Mr. Kaplen, didn't you think it would be only
3 fair to speak to both sides?

4 MR. KAPLEN: Objection.

5 Q. You could answer.

6 A. Yes but I was also very busy at
7 the time and it just sort of slipped my mind.

8 Q. That call was made months ago,
9 was it not? As a matter of fact it was
10 several calls but the one you are speaking of
11 was made months ago?

12 A. I only remember one phone call
13 and I believe it was a couple of weeks before
14 I came out here again. So I think it was
15 only about three weeks ago.

16 Q. Did you make any effort to
17 respond to that call knowing that it was on
18 behalf of the driver of the car?

19 A. No, I did not.

20 Q. Were you instructed by anybody
21 not to?

22 A. No, I was not instructed.

23 Q. Were you advised that maybe you
24 shouldn't do so?

25 A. No, I was not.

MARIA EBERLINE

Q. Now, you identified the photograph here at Ninth and 40 --

A. 37 street.

Q. 37 Street I am sorry.

Have you been there on a number of occasions before?

A. No.

Q. How many times were you at that intersection before that night?

A. I believe that was the first time.

Q. Have you been there since?

A. No, not that I recall.

Q. Now the theater that you went to when you saw In The Heights, that theater has two parts, does it not, there are two theaters?

A. I believe so.

Q. Okay. And there were two shows that night?

A. Uh-hu.

Q. And there is another theater the Zipper theater along that street; is there not?

MARIA EBERLINE

A. I guess, I am not really familiar with that area.

Q. Do you know how many theaters there are on that street?

A. No.

Q. However many there are, there are theaters that are letting out at that same time, are there not?

A. Yes.

Q. And so there were a number of people walking on 37 Street?

A. Yes.

Q. Okay.

Now when you were in the theater, did you see the woman who was involved in the accident and/or her escort?

A. No.

Q. Did you see them as you were leaving the theater?

A. No.

Q. Did you see them as you were walking along from the theater up to Ninth Avenue?

A. No, I did not.

MARIA EBERLINE

Q. And the theater is much closer to Tenth Avenue, isn't it on 37 Street?

A. Yes.

Q. As a matter of fact it is almost at Tenth?

A. Yes, almost at Tenth.

Q. So you walked the entire block?

A. Yes.

Q. You said you were the first one?

A. In that group at the crosswalk.

Q. Let me ask you this, did you stay for the encore?

A. Actually I believe we left during.

Q. During the encore?

A. Yes.

Q. Did others leave at that time also?

A. Not that I saw.

Q. As you were walking along there, were others walking -- none walking in front of you, is that right? Was there anyone in front of you?

A. There might have been, there

1 MARIA EBERLINE

2 might have been a few people but I honestly
3 don't remember.

4 Q. I understand.

5 Were there people walking behind you?

6 A. Yes.

7 Q. Do you know how close behind
8 you?

9 A. I mean as we were getting out,
10 there were just a lot of people on the street
11 so.

12 Q. And a number of those would have
13 been walking towards Ninth Avenue?

14 A. Yes.

15 Q. As you walked along, there was
16 snow on the ground?

17 A. Yes, light dusting of snow.

18 Q. And it was also slushy?

19 A. Yes.

20 Q. So you walked very carefully?

21 A. Yes.

22 Q. What kind of shoes did you have
23 on?

24 A. I think boots but I don't
25 remember what I had on.

MARIA EBERLINE

Q. Something that you could grab
the ground, rubber or something?

A. Yes.

Q. And your friend same thing
Sharlene also?

A. Yes.

Q. You mentioned before you were
not carrying an umbrella?

A. No.

Q. You or Sharlene?

A. No.

Q. Did you have any headgear?

A. Hat and scarf.

Q. Sharlene the same?

A. Yes.

Q. Was the scarf up around your
head?

A. No, around my neck.

Q. How about the hat, was hat on
top of your head?

A. Yes.

Q. Did it cover your ears?

A. No, I don't think so.

Q. And it was snowing during this

MARIA EBERLINE

entire time?

A. Uh-hu.

Q. Now, the people who were walking there, were they both male and female, men and women?

A. All around me?

Q. Yes.

A. Yes.

Q. At any time before this accident did you notice the young lady who was involved in the accident?

A. No.

Q. Or her escort?

A. No.

Q. Approximately how long did it take you to walk from the theater to the corner of Ninth Avenue?

A. Maybe a minute.

Q. And were there any cars proceeding west on 37 Street as you were walking along?

A. I don't remember.

Q. And when you got to the intersection, I believe that you said that

1 MARIA EBERLINE

2 you and Sharlene were the first ones there?

3 A. Uh-hu.

4 Q. What was the status of the walk,
5 don't walk signal when you got there?

6 A. When we get there it was a don't
7 walk signal.

8 Q. Don't walk?

9 A. Uh-hu.

10 Q. For how long did you wake for
11 the walk?

12 A. About 15, 20 seconds.

13 Q. And from don't walk, did it turn
14 to something?

15 A. Yes, it turned to the walking
16 sign and we proceeded to walk right after it
17 turned.

18 Q. At the corner and I believe you
19 said, I'm now pointing to the corner by H&R
20 Block, I believe that was the corner you said
21 you were coming from?

22 A. Yes.

23 Q. There is a pole there, which
24 side of the pole were you on?

25 A. I believe we were on this side

MARIA EBERLINE

of the pole in-between this (indicating).

Q. Indicating as you're looking at the photograph P4 on the left side of the pole?

A. Yes.

Q. Or the inside so to speak?

A. On the inside, yes.

Q. As you were waiting there for that 15 or 20 seconds, did the other people catch up with you when they were waiting also?

A. I honestly don't remember.

Q. Was there anyone on the other side of the pole as you were waiting?

A. I think there might have been a group of people approaching us, but I don't really remember.

Q. When you were at dinner, did you have anything of an alcoholic nature?

A. No.

Q. Did you have any that day alcohol?

A. Pardon?

Q. Did you have any alcohol that

MARIA EBERLINE

day?

A. No.

Q. How about Sharlene?

A. I don't believe so. She is a school teacher so.

Q. Okay. Were there other people with umbrellas?

A. I honestly don't remember.

Q. And was it windy?

A. Not really windy, no.

Q. You don't remember wind coming blowing the snow?

A. No, just cold.

Q. Okay. Were you on the left or right side of Sharlene as you were crossing the street?

A. I was on the left side.

Q. And approximately how far was Sharlene from you as you crossed the street?

A. We were about shoulder to shoulder.

Q. About how far away was she?

A. Pardon me?

Q. Just inches away?

1 MARIA EBERLINE

2 A. Yes, just inches away.

3 Q. I understand.

4 Did you experience any difficulty
5 crossing the street with any depressions or
6 any imperfections in the street?

7 A. No.

8 Q. But that was your very first
9 time there?

10 A. Uh-hu.

11 Q. And your last?

12 A. Uh-hu.

13 Q. And your only?

14 A. As far as I know, yes.

15 Q. Okay, all right.

16 And your intention was to get a cab
17 on Eighth Avenue because that would be the
18 uptown street and you were going back to
19 Harlem?

20 A. Yes.

21 Q. Okay.

22 Now have you ever heard a woman who
23 was involved in the incident, I will call her
24 Ms. Paradi, okay. Have you ever talked with
25 her before?

MARIA EBERLINE

A. No.

Q. Have you ever heard her?

A. No.

Q. Have you ever heard her scream?

A. No.

Q. But you heard a scream?

A. I heard a scream.

Q. Did you see who it was that screamed or did you hear the scream and then you turned around?

A. I heard the scream and then turned around.

Q. Were there other people in the area?

A. Yes.

Q. Were some of those people women?

A. Probably.

Q. I think you said you proceeded to the cover and then you turned around; is that correct?

A. Uh-hu.

Q. You were almost at the curb when the accident happened?

A. Yes, we were almost there

1 MARIA EBERLINE

2 probably a few steps away.

3 Q. Now, when you came to the curb,
4 did you then proceed over to where the
5 accident was?

6 A. No.

7 Q. You stayed right there on the
8 curb?

9 A. Yes.

10 Q. Did you ever go over to where
11 the accident was?

12 A. Only when, after the ambulance
13 came and we crossed over to talk to the
14 police.

15 Q. After they had taken Ms. Paradi
16 away?

17 A. They were in the process of,
18 yes, but we didn't want to get in the way.

19 Q. I understand.

20 Did you actually see her when she was
21 lying on the ground?

22 A. We saw the form of her but not
23 up close.

24 Q. From a distance?

25 A. Yes.

1 MARIA EBERLINE

2 Q. Four, five lanes away?

3 A. Uh-hu.

4 Q. You never got closer than that
5 when you she was on the ground?

6 A. No.

7 Q. Do you know whether or not she
8 was wearing glasses?

9 A. I have no idea.

10 Q. Do you know what kind of
11 clothing she was wearing?

12 A. No.

13 Q. What color it was, by color I
14 mean light or dark?

15 A. I think it was dark.

16 Q. Now did you see an umbrella in
17 the area?

18 A. No.

19 Q. Did you see Ms. Paradi's
20 companion, whose name is Mr. Blank, did you
21 see him?

22 A. Yes.

23 Q. Did you talk to him?

24 A. No.

25 Q. Did you hear him talk to anyone?

1 MARIA EBERLINE

2 A. No.

3 Q. Did you hear anyone talk to
4 anyone other than perhaps Sharlene?

5 A. No.

6 Q. Did you hear Sharlene talk to
7 anyone?

8 A. No, we were talking to each
9 other at that point so.

10 Q. And you went over and identified
11 yourself to the police?

12 A. Yes.

13 Q. Okay. It was it still snowing?

14 A. Very lightly.

15 MR. BUTLER: I would ask that
16 this photograph be marked, please.

17 (Photograph marked for
18 identification Defendant's Eberline
19 Exhibit E A.)

20 MR. BUTLER: Why don't we mark
21 it Defendant's Exhibit, Eberline
22 Defendant's Exhibit.

23 THE WITNESS: Eberline.

24 MR. BUTLER: E, A.

25 Q. This is a photograph taken by

1 MARIA EBERLINE

2 the New York City Police Department at the
3 time of the accident and I would ask you does
4 that --

5 MR. KAPLEN: Excuse me, it was
6 not taken at the time of the accident.
7 You don't know when it was taken.

8 MR. BUTLER: I'll make the
9 representation that it was taken at
10 the time of the accident.

11 MR. KAPLEN: At the time of the
12 accident or hours later, do you know?

13 MR. BUTLER: Within a very
14 short period directly after.

15 MR. KAPLEN: I object to that.
16 Would you just show her the picture
17 without that statement because I
18 object to that statement.

19 Q. I show you this picture and I
20 will make a representation to you and the
21 proofs will show that this photograph was
22 taken very shortly after and not hours, very
23 shortly.

24 MR. KAPLEN: Objection.

25 Q. Is that condition what you would

MARIA EBERLINE

describe as light snow?

A. Yes. I mean I have seen some pretty heavy snows here in New York so.

Q. And you consider that light snow?

A. Well, no not really light snow.

Q. What would you consider it?

A. Moderate.

Q. With the snow in that condition, can you see any of the lines that you could see in P F4, PLF4?

A. I mean seen, I see part of the crosswalk right there.

Q. Where?

A. Right here (indicating).

Q. Would you please take a pen if you would and mark where you say you see part of the crosswalk and this is on Defendant's Exhibit E A photograph, police photograph.

A. Actually no, I can't really see it.

Q. Thank you.

A. Sure.

Q. As you were standing on the

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2 corner by the H&R Block that would be the
3 westerly corner?

4 A. Uh-hu.

5 Q. Were cars proceeding down Ninth
6 Avenue, south on Ninth Avenue?

7 A. Again, I don't really remember,
8 it was traffic.

9 Q. Were cars proceeding west, as
10 you were standing there, were cars proceeding
11 west on 37 street?

12 A. I don't really remember.

13 Q. Were cars turning as you were on
14 that corner, turning from 37 Street to either
15 go on to the tunnel or south on Ninth Avenue?

16 A. There were no cars passing in
17 front of us so.

18 Q. I am talking about when you were
19 on the corner.

20 A. Uh-hu.

21 Q. I am not talking about when you
22 were walking?

23 A. I don't really remember.

24 Q. Was either one of you talking on
25 a cell phone?

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A. No.

Q. Is either one of you a nurse?

A. No.

Q. Do you know whether or not a nurse just came along, I don't mean any EMTs just came along as a nurse?

A. No.

Q. Did anyone else come to the assistance of Ms. Paradi?

A. I believe so, yes.

Q. Did you talk to any of those people?

A. No.

Q. You were still on the far corner?

A. Uh-hu.

Q. Do you know whether she was lying in a prone or in a, what position she was lying in?

A. I have no idea. We just saw basically a form and none of us really wanted to cross over.

Q. Did you make any notice as to in what direction she was lying or where she was

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2 with relation, did you make any notice where
3 she was in relation to the vehicle?

4 A. Yes, she was in the crosswalk.

5 Q. And you could see the crosswalk
6 in the snow?

7 A. Yes, at that point, yes.

8 Q. You can?

9 A. Yes, I could see where I was
10 walking and I am sure I was in the crosswalk.

11 Q. How were you sure you were in
12 the crosswalk?

13 A. Pardon me?

14 Q. How were you sure you were in
15 the crosswalk?

16 A. Where we were standing, we were
17 standing within the lines of the crosswalk.

18 Q. Based on that answer, you
19 crossed over and heard the scream and looked
20 over and you are basing that on the fact that
21 the person was within the crosswalk?

22 A. Yes, she was almost directly
23 behind me so.

24 Q. Oh, you knew that?

25 A. Yes.

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2 Q. As you were walking along you
3 knew she was directly behind you?

4 A. No, I am saying when I turned
5 around and where the car was and where the
6 body ended up, she was almost directly behind
7 me.

8 Q. And this was the car that was
9 going 40 miles an hour?

10 A. Yes.

11 Q. Do you know where the car that
12 was 40 miles an hour came from?

13 A. From the opposite direction on
14 37.

15 Q. Made the turn at 40 miles an
16 hour?

17 A. Yes, I don't know if he slowed
18 down but it seemed he was going about that
19 fast when he came towards us.

20 Q. Okay.

21 MR. BUTLER: Thank you, very
22 much.

23 THE WITNESS: Thank you.

24 MR. KAPLEN: Thank you very
25 much for coming.

MARIA EBERLINE

THE VIDEOGRAPHER: This marks
the end of the deposition of Ms. Maria
Eberline. Total number of tapes used
today is one. We are going off the
record the time is 12:57 p.m.

MARIA EBERLINE

Subscribed and sworn to before me

this day of
, 2007.

Notary Public

C E R T I F I C A T E .

STATE OF NEW YORK)

: ss.

COUNTY OF NEW YORK)

I, JOWELL FALSETTA, a Shorthand
Reporter and Notary Public within and for the
State of New York, do hereby certify:

That MARIA EBERLINE, the witness whose
deposition is hereinbefore set forth, was duly
sworn by me and that such deposition is a true
record of the testimony given by the witness.

I further certify that I am not
related to any of the parties to this action by
blood or marriage, and that I am in no way
interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 2 day of December, 2007.


JOWELL FALSETTA

I N D E X

EBERLINE EXHIBITS

| No. | Ident. | Description |
|-----|--------|-------------|
|-----|--------|-------------|

| | | |
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Mr. Kaplen, pages 5-17

Mr. Butler, pages 17-41

1
2
3 STATE OF NEW YORK)

ss:

4 COUNTY OF NEW YORK)

I wish to make the following changes, for the following reasons:

5 PAGE LINE _____

6 CHANGE FROM: _____

CHANGE TO: _____

7 REASON: _____

8 CHANGE FROM: _____

CHANGE TO: _____

9 REASON: _____

10 CHANGE FROM: _____

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11 REASON: _____

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13 REASON: _____

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15 REASON: _____

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17 REASON: _____

18 CHANGE FROM: _____

CHANGE TO: _____

19 REASON: _____

20 CHANGE FROM: _____

CHANGE TO: _____

21 REASON: _____

22
23 _____
24 Subscribed and sworn to before me
25 this _____ day of _____, 2007.

| | | | | |
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